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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,726	11/18/2003	Robson L. Splane JR.	01LIF96639	5019
22492	7590	01/12/2005	EXAMINER	
DAVID L. DAVIS, ESQ. 90 WASHINGTON VALLEY ROAD BEDMINSTER, NJ 07921			WHITE, RODNEY BARNETT	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/715,726

Applicant(s)

SPLANE, ROBSON L.

Examiner

Rodney B. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 10 is/are rejected.
- 7) ☒ Claim(s) 3 and 5-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's arguments filed 10/20/2004 have been fully considered but they are not persuasive.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Logan, Jr. (U.S. Patent NO. 5,626,389).

Logan, Jr. teaches a lifting toilet chair, comprising a base frame including an upstanding framework having a generally rectangular horizontal open space at its upper end defined by peripheral members; at least one support member 68 overlying said base frame, said at least one support member being pivotally connected to a top front at 61 of said base frame and extending rearwardly beyond a top rear peripheral member of said base frame defining said open space; a toilet seat 12 overlying said open space and fixedly secured to said at least one support member 68; and a pair of arm rests 20

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laterally flanking said toilet seat, wherein each of said arm rests is coupled at a rearward first point 70 to said at least one support member 68 (since armrests 20 are bolted to link 62 and link 62 is hinged at 70 to support 68 (link 68)) and pivotally connected at a forward second point at 61 to said base frame, and wherein each of said arm rests has a hand grip portion extending forwardly beyond said second point, means for yieldably biasing said at least one support member to pivot upwardly away from said base frame, comprising means for limiting the upward pivoting of said at least one support member away from said base frame to an angle of about forty-five (45) degrees to the horizontal (See Figure 4).

Claims 3 and 5-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### Remarks

Applicant argues that the Logan, Jr. reference (U.S. Patent No. 5,626,389) teaches away or "in contrast" to the present invention in that it teaches a complex mechanism which utilizes a parallel four-bar linkage system to interconnect the seat and the frame. However, the very structure of that linkage system allows the Logan, Jr. reference to read on the current rejected claims. The links, specifically links 62 and 68, can be translated as "supports" since they are supporting the structures that are

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attached or connected to them, such as the armrests and the seat, and since such terms as "top front of said base frame" and "forward second point to said base frame" are such general, broad terms. Also, the handgrips do extend forwardly beyond the second point as defined in the last 2 lines of claim 1. Also, Applicant argues specific features of his invention that are not defined in the claims, specifically claim 1, such as the fact that the seat of the Logan, Jr. patent always remains substantially horizontal as it is moved between a lower orientation and a raised orientation, as opposed to his "claimed construction wherein the seat itself pivots relative to the base frame as it is moved." Whether or not that feature is present in the Logan, Jr. patent is irrelevant for now since Applicant does not define that feature in the claims. Applicant only defines his invention using terms such as a "base frame", "at least one support member", how those support members are pivotally connected to the base frame, an "open space", a "toilet seat" overlying the open space and fixedly secured to the at least one support member, and a pair of armrests laterally flanking the toilet seat, and how the armrests are coupled to the at least one support member at a rearward first point and a forward second point to the base frame, and wherein the armrests have a handgrip extending beyond the second point. Logan, Jr. teaches, or rather shows all of these structures and/or features, as shown in Fig. 4, and better yet, the seat in Logan, Jr. does pivot relative to the base frame as it is moved" due to the pivotal or hinged connection of the seat to support 68 (link 68). Applicant cannot assert that the reference does not read 102(b) on the claims by arguing a feature that his invention teaches but is not defined in the claim(s). Apparently, the Logan, Jr. reference reads 102(b) on the "claimed

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construction", i.e. *structure* presented in the claims. However, Applicant should add language and/or more specific structure to claim 1 to define the feature(s) that allegedly is not taught by the Logan, Jr. patent.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

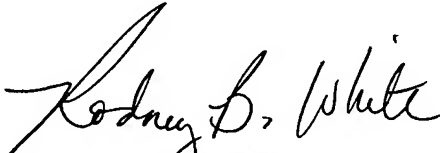
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (703) 308-2276.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,  
Patent Examiner  
Art Unit 3636  
January 10, 2005



**RODNEY B. WHITE**  
**PRIMARY EXAMINER**